

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 20-1882V

UNPUBLISHED

KELLY JOYCE,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 3, 2022

Special Processing Unit (SPU);  
Ruling on Entitlement; Concession;  
Table Injury; Influenza (Flu) Vaccine;  
Shoulder Injury Related to Vaccine  
Administration (SIRVA)

*Jimmy A. Zgheib, Zgheib Sayad, P.C., White Plains, NY, for Petitioner.*

*Nancy Tinch, U.S. Department of Justice, Washington, DC, for Respondent.*

### **RULING ON ENTITLEMENT**<sup>1</sup>

On December 16, 2020, Kelly Joyce filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a left shoulder injury related to vaccine administration (“SIRVA”), a defined Table injury, after receiving an influenza (“flu”) vaccine on November 8, 2019. Petition at 1, ¶¶ 4, 38-39. Petitioner further alleges that her SIRVA was caused-in-fact by the flu vaccine she received, that she received the vaccine in the United States, that she suffered the residual effects of her SIRVA for more than six months, and that neither she nor any other party has filed a civil case or received

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<sup>1</sup> Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

compensation for her SIRVA injury. *Id.* at ¶¶ 4, 38, 40, 42-44. The case was assigned to the Special Processing Unit of the Office of Special Masters.

Because the vaccine record in this case did not indicate the site of vaccination,<sup>3</sup> I issued a fact ruling on December 14, 2021, finding the flu vaccine was most likely administered in Petitioner's left shoulder, as alleged, and that onset of Petitioner's pain occurred within 48 hours of vaccination. ECF No. 26. Thereafter, Respondent filed a Rule 4(c) Report recommending compensation be awarded in this case. Rule 4(c) Report at 1, ECF No. 38. Reserving his right to appeal my fact ruling (*id.* at 12-13) and based upon my factual findings and the record as it currently stands, Respondent "has concluded that [P]etitioner suffered SIRVA as defined by the Vaccine Injury Table." *Id.* at 13. Furthermore, he "does not dispute that that [P]etitioner has satisfied all legal prerequisites for compensation under the Act." *Id.*

**In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation.**

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> In her petition, Ms. Joyce also acknowledges that the vaccine record does not indicate the site of administration. Petition at ¶ 4; see Exhibit 2 at 4 (vaccine record).